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July 6, 1993

William Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

ATTN: The Honorable Richard L. Sippel
Administrative Law Judge

RE: Toccoa Falls College, et al., MM Docket No. 93-128,
Application of Nazareth Communications, Inc. (BPED-
920811MA)

Dear Ms. Searcy:

Transmitted herewith on behalf of Nazareth Communications, Inc.
(Nazareth) is an original and five copies of its "Opposition to
Motion To Enlarge Issues" filed in connection with the above-

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HAND DELIVER

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JUL - 6 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Applications of)

TOCCOA FALLS COLLEGE)
Belton, South Carolina)

88.5 MHz, Channel 203C2)
50kW; 91 Meters (H&V))

NAZARETH COMMUNICATIONS, INC.)
Williamston, South Carolina)

88.3 MHz; Channel 203C2)
50 kW; 91 Meters (H&V))

For Construction Permit for a)
Noncommercial Educational FM)

File No. BPED-920113ML

File No. BPED-920811MA

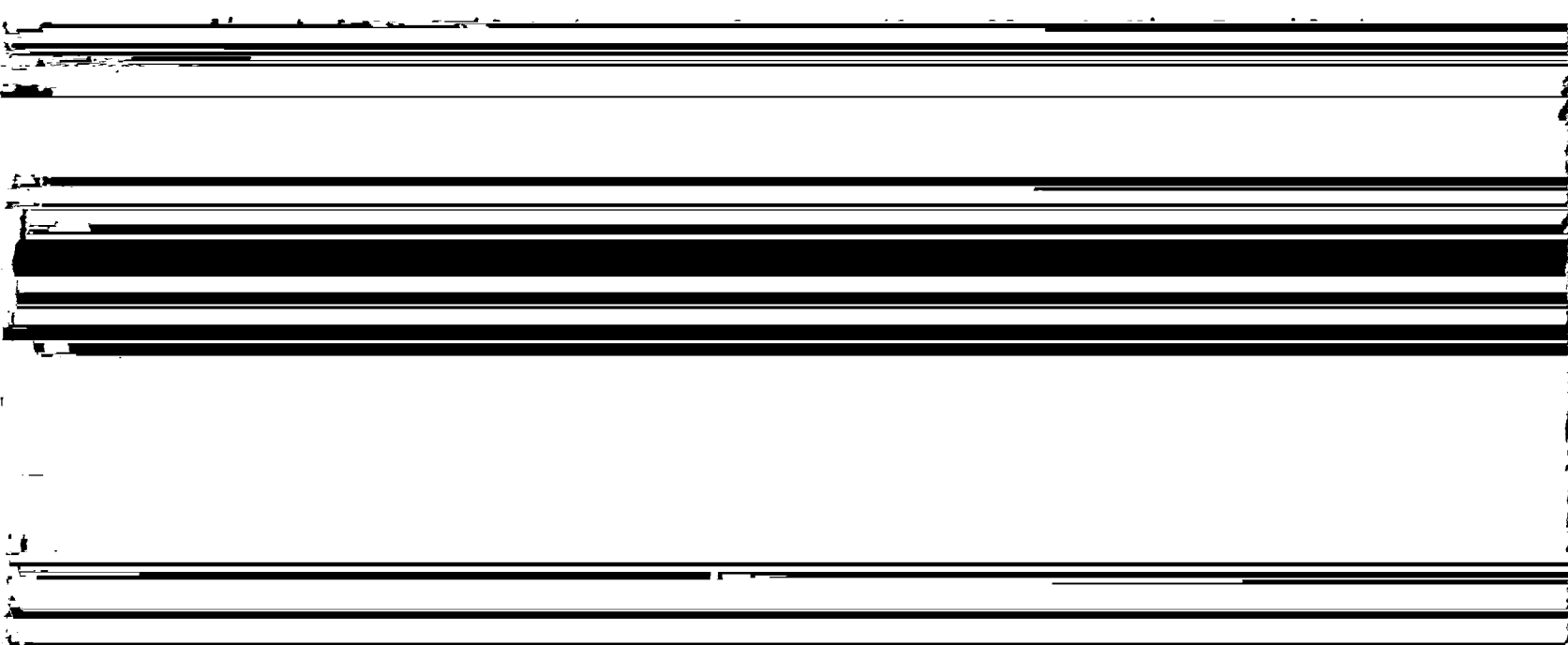
Nazareth made various representations concerning its planned cooperation with Presbyterian College (hereinafter "the College"),

which are outlined in pages 2 and 3 of Nazareth's Motion

Clearly, there has been a breakdown of communication between Nazareth and Dr. Orr--but the primary responsibility for that breakdown does not lie with Nazareth.

2. As outlined in Mr. Bridges "Declaration," (hereinafter "Exhibit p.____) before Nazareth filed its application, Mr. Bridges had at least three personal meetings and numerous telephone conversations with College representatives or persons active in its affairs during which its plans and proposals were discussed, and Nazareth filed its application in which these plans were outlined with the knowledge and written approval of a College Vice President.

3. Nazareth made its first contact with the College when it contacted a friend of Mr. Bridges, Dr. Kowalski, who is a former chairman of the College's Board of Visitors who is interested in College affairs because of the involvement of his Church. In two separate luncheon meetings Mr. Bridges described Nazareth's plans, and asked whom on the College staff would be the person to contact to discuss the matter with the College further. Dr. Kowalski



primarily for an internship program for the College, once again. Brown and Bridges met at the College on August 7, 1992 at which time Mr. Bridges described Nazareth's plans, particularly its plans to establish an internship program for the College's students for College credit, yet again. Brown, according to Bridges, was enthusiastic about the project, and stated that the College's president had an interest in radio, and spoke of the College's plans to inaugurate a closed circuit radio station. Mr. Bridges confirmed this conversation in writing. (Exhibit, Attachment 1). Mr. Bridges also told Brown during that meeting that Nazareth was filing an application within the next few days, and that Nazareth wanted to refer to its plans for the College in the application, and asked Mr. Brown to provide some written expression of interest in cooperating with Nazareth on these proposals before the application was filed. When assured by Bridges that representations relative to the College concerning Nazareth's proposals did not obligate the College "legally or contractually," Brown agreed to send Bridges the requested letter. Brown sent Bridges a draft letter by telecopier (Exhibit, Attachment 2), discussed the contents of the letter with Mr. Bridges, and then sent Mr. Bridges another copy on College letterhead (Exhibit, Attachment 3). The letter was neither as positive or as detailed as Mr. Brown seemed during their discussions, but Mr. Bridges realized, from long association with naturally cautious institutions such as Colleges, that such a letter was as strong a commitment as he would likely get in writing on such short notice,

and Mr. Brown was enthusiastic during their conversations. Bridges, accordingly, Bridges received a copy of the letter by telecopier and spoke with Mr. Brown about the letter the day before Nazareth's application was filed. Nazareth thus contacted the person identified to it as the person to contact at the College, explained its proposals, received encouragement concerning the College's interest in cooperating with the proposals, told the College it wished to refer to the proposals in its application and received a written expression of interest in Nazareth's proposals from a College Vice President before it filed its application.

4. This first meeting was followed up with the meeting referred to in Dr. Orr's statement, scheduled by Mr. Brown and held on September 4, 1992. Mr. Brown, Mr. Bridges and Dr. Orr took part in the meeting. Mr. Bridges again discussed and described Nazareth's proposals, including specific program plans and proposals that would involve Nazareth and the College in cooperative program efforts, including a weekly "President's Report" for Dr. Orr; the broadcast of College sporting events; a "College Report" program hosted by faculty members; the broadcast of College instructional programs; and, and internship program for College students (Exhibit p. 6). These program proposals seemed agreeable to President Orr, who asked Mr. Bridges to put the

representations were made and who scheduled the meeting, had kept Dr. Orr informed of his earlier conversations with Mr. Bridges. Dr. Orr seemed more interested in the financial ramifications for the College of Nazareth's proposals, but did state that he was "open to exploring" a relationship to Nazareth (Exhibit, p. 5), and told Mr. Bridges to continue to work with Mr. Brown. Significantly, Mr. Bridges spoke with Mr. Brown later that same evening, and Brown told Mr. Bridges not to interpret Dr. Orr's "more conservative approach as disinterest on his or the College's part." Mr. Brown assured him of the College's continued interest in working with Nazareth (Exhibit, p. 6). The meeting confirmed, in Bridge's mind, Brown's ability to speak for the College, and Mr. Brown was quick to assure Nazareth of the College's interest in the proposals that they had just discussed, despite, in Brown's words, Dr. Orr's "more conservative approach."

6. Because of the illness of his wife, Bridges was not able to send the written confirmation of the proposals discussed during the September 4 meeting until late October (Exhibit, Attachment 6), but Bridges discussed these proposals with Mr. Brown on October 27 (Exhibit, p. 6-7). In each conversation, Mr. Brown was enthusiastic about the proposals (Exhibit, p. 7). A written copy of these program proposals was provided to Mr. Brown for Dr. Orr. These program proposals, which were discussed with Mr. Brown and Dr. Orr in the September 4 meeting, with Mr. Orr in October, and provided, in writing to Mr. Brown and, Bridges believed, to Dr. Orr, were used almost verbatim in Nazareth's December 30 amendment.

7. Bridges twice more discussed Nazareth's proposals with Mr. Brown, once in February, 1993 and again in March, 1993. In the February telephone call Mr. Brown was told that Nazareth referred to the programs that he was sent in an amendment filed at the end of the previous year, and Mr. Brown neither objected or reacted in any way. (Exhibit, p. In a call two weeks later Mr. Brown again told Mr. Bridges of the College's continued interest, and assured Mr. Bridges that if there were ever any lessening in the College's interest or any change in its plans, that Bridges would be told so that Nazareth could revise the representations in its application accordingly (Exhibit, pp. 7-8).

8. This course of conduct shows that Bridges, and Nazareth, proceeded in good faith and in reliance on assurances, in one instance written, that its proposals and plans had the active interest and prospective cooperation of the College. It relied on the assurances of the person identified by a College representative, Dr. Kowalski, and then the College's president, Dr. Orr, as the person with whom it should work in discussing cooperative programs. It outlined its plans and proposals on any number of times to Mr. Brown, including its specific program proposals involving the College, and discussed these plans in Dr. Orr's presence. Dr. Orr seemed agreeable to these program proposals, and wanted them reduced to writing, which Nazareth did. Brown was enthusiastic about these proposals, and assured Nazareth not to interpret Dr. Orr's "more conservative approach" as a lack of interest on the College's part. At least since August 7, 1992,

Mr. Brown knew that Nazareth would be describing its plans and proposals concerning the College in its FCC application, and had provided at least one letter in furtherance of that end. Based on this record, Nazareth cannot be held to have intentionally misrepresented its relationship with the College, or that it made its representations concerning the College to the FCC with knowledge of their objective falsity. It had a good faith basis for every statement made to the FCC concerning the College, and was assured, as late as March 1, of the College's continued interest in cooperating with Nazareth. Moreover, and perhaps even more significantly, Nazareth was assured as late as March 1 that it would be informed of any lessening in the College's interest or any change in its plans so that Nazareth could amend its application accordingly. These assurances were authoritative, and coming from the person clothed with apparent authority to discuss the matter with Nazareth. Again, its good faith cannot reasonably be questioned.²

². Mr. Bridge's declaration, including attachments, was sent to Mr. Brown on June 28, asking him to verify the statements made by Mr. Bridge's, and requesting his input concerning the Declaration by Friday, July 2. During a telephone conversation with Mr. Bridges. Mr. Brown would be reviewing the Declaration and getting back to Mr. Bridges. To date he has not done so. If Mr. Brown does reply to Mr. Bridges, in writing, Nazareth will file the document as a supplement to this Opposition.

WHEREFORE, the foregoing considered, Nazareth Communications, Inc. respectfully requests that the "Motion to Enlarge Issues" filed by Toccoa Falls College be speedily dismissed.

NAZARETH COMMUNICATIONS, INC.

By: 

Joseph E. Dunne III, Esq.
Its Attorney

May & Dunne, Chartered
1000 Thomas Jefferson St., N.W.
Suite 520
Washington, D.C. 20007
(202) 298-6345

[1;Or

EXHIBIT 1

DECLARATION OF B.H. BRIDGES

I, B.H. Bridges, make the following statement under penalty of perjury of the laws of South Carolina and the United States of America.

1. I am the president and a trustee of Nazareth Communications, Inc. I am the Nazareth principal who assisted counsel in the preparation of Nazareth's application for 88.5 MHz in Williamston, South Carolina, as well as with all amendments to the application. The application and amendments to the application were certified by me, by my signature, as true and correct at the time the submission was filed with the Commission. All representations made in Nazareth's application were made by me, or with my approval. All representations made in the application were true and correct when they were made to the Commission, including all representations made concerning Nazareth's discussions with Presbyterian College.

2. During the Spring and Summer of 1992 I, along with members of Nazareth's board of directors, studied the prospects of filing for the frequency. I know of Presbyterian College (the College) because of my long residence in the community, and because of my friendship with Dr. Randy Kowalski, Senior Minister of the First Presbyterian Church in Greenville. Dr. Kowalski is also a former member of the Board of Visitors of Presbyterian College and an active supporter of the College's financial and educational goals who is consistently involved in College affairs. Pastor Kowalski is and has been a good friend of mine for over ten years.

3. When I began preparing Nazareth's application I believed

that the College and Nazareth might have some common objectives, and that the College might wish to cooperate with Nazareth on an internship program as well as on several of Nazareth's programs. I had lunch with Rev. Kowalski on two different occasions during which Nazareth's plans were discussed, and I asked him whom I might contact at the College to discuss working on a cooperative basis.

broadcasts for the College, and other issues. Mr. Brown was clearly interested in Nazareth's proposals and spoke of Dr. Kenneth Orr's interest in radio, and of the College's plans to inaugurate a closed circuit radio system on campus. Toward the end of the meeting, I told Mr. Brown that Nazareth was in the process of preparing an application to file at the FCC within the next few days, and that I wanted some sort of assurance, in writing if possible, concerning the College's interest in working with Nazareth before I filed the application. I emphasized that it was important that we receive some response from the College because Nazareth was going to file an application within a few days. I also recall our discussing the fact that the representations relative to Presbyterian College concerning Nazareth's proposals in the application did not obligate the College in a legal or contractual sense, and could be revised if the College's plans changed. Thus, he felt comfortable in giving us the requested written indication of interest. I asked for further information about the College for the application, and Mr. Brown directed me to the College admissions office where I was provided with a number of College publications. I confirmed that conversation in a letter dated August 7, a file copy of which I have attached (Attachment 1).

6. The following Monday, August 10, I received a draft copy of the attached letter from Mr. Brown by telecopier (Attachment 2). Mr. Brown and I conferred by telephone and discussed whether the letter I received was adequate for our purposes. I assured him that it was enough for us to file the application, even though it

did not refer to all of the areas that we discussed during our conversations, and I received the same letter on the College's letterhead (Attachment 3) a few days later in the regular mail. Mr. Brown's reluctance to be more forthcoming about our conversations in his letter did not bother me because I have long experience in dealing with conservative institutions like churches and religious colleges, and the letter I received was as strong an endorsement as Nazareth would likely get on such short notice.

7. The information concerning Presbyterian College referenced in Exhibit II-1 of Nazareth's application was taken from the information provided to me by Mr. Brown. The representations made in the application concerning Nazareth's plans for an internship program, and programs broadcast on the station for credit at the College, were discussed with Mr. Brown in our several telephone conversations, and during our meeting. Mr. Brown verbally indicated an interest in pursuing such cooperative ventures during our meeting, and confirmed that interest in a letter. While Mr. Brown's letter stated that he "was not able to speak for the college as a whole...", his letter told me that "I believe it is accurate to indicate an interest in further conversations." Mr. Brown knew Nazareth was filing an application within the next few days, provided me with a letter with that in mind. The application also discussed Nazareth's plans, which I had discussed at some length with Mr. Brown.

8. Mr. Brown and I had a meeting with Dr. Kenneth Orr, the College's president, on Friday, September 4. I discussed with

Dr. Orr, generally, the same topics that I had discussed with Mr. Brown in our earlier meeting. The meeting was pleasant, but Dr. Orr was cautious about making any financial commitments on behalf of the College. He asked me at one point what financial support Nazareth wanted from the College. I assured him that we did not expect the College to finance the project and that we could discuss a fair service charge for some of the program time used by the College, such as sports broadcasts, at a later date. I also made clear that services such as the internship program and certain jointly produced programs would be provided without charge on the part of the College.

9. Dr. Orr asked me if Nazareth needed the College's involvement for educational purposes in the application, and I responded that we did, but that we proposed working with other educational organizations as well. I recall mentioning that the application was available for public inspection at the public file in Williamston. I don't recall specifically referring to the fact that Nazareth had mentioned the College's name in its application at that time. I would not have thought it necessary, however, since I assumed that Mr. Brown had mentioned the fact to him, since I requested and received a written expression of interest from Mr. Brown before Nazareth filed its application for the purpose of mentioning our conversations in the application. Someone, I can't now remember who, asked if our relationship with the College would be "exclusive," meaning that they would be the only college providing interns, cooperating in programming, etc. I said that

Nazareth would be working with other educational organizations as well. Dr. Orr also asked me how I came to approach the College, and I mentioned my friendship with Dr. Kowalski. Although Dr. Orr seemed less enthusiastic than Mr. Brown had been, he did state that he was certainly "open to exploring" a relationship with the Nazareth, if all the details (which I understood to mean financial details) could be worked out.

10. During our conversation we discussed program ideas and concepts on which the College and Nazareth could cooperate. I described several specific program ideas, including: a weekly "President's Report" for Dr. Orr; the broadcast of College sporting events; a "College Report" program hosted by faculty members; the broadcast of College instructional programs; and an internship program for College students. The concepts described seemed agreeable to Dr. Orr, and he asked that I get some of the specific program proposals to them in writing within the next two or three weeks.

11. The meeting closed with Dr. Orr suggesting that I continue working with Mr. Brown as we had been working together thus far. That same evening I spoke to Mr. Brown again, who told me not to interpret Dr. Orr's seeming more conservative approach as disinterest on his or the College's part. I followed up my meeting with a letter, which I have attached (Attachment 4). I also wrote to Mr. Brown (Attachment 5).

12. Following the September 4 meeting my wife became ill and was hospitalized in Texas from mid-September to Mid-October. I did

not, therefore, immediately follow up on my promise to get Dr. Orr and Mr. Brown some written proposals to review. During this time period I was traveling a great deal and he and I missed each other with telephone calls. I finally connected with him in mid-October to explain the delay, and sent him some proposals in a letter the next day, including an extra copy for Dr. Orr. I have attached the letter and proposals (Attachment 6). These written proposals flesh out the program proposals I discussed with Dr. Orr and Mr. Brown on September 4. Moreover, I described these proposals to Mr. Brown during our telephone conversation in October. Mr. Brown responded with enthusiasm and said that he was looking forward to seeing the proposals in writing. These proposals were used, almost verbatim, in Nazareth's amendment of December 30.

13. I called Mr. Brown again on February 15, 1993 to check back with him. He indicated that both he and Dr. Orr had been heavily involved with the College's Capital campaign, and that he had not had the time to meet with Dr. Orr about the application. He asked if it were urgent, I said "no," but asked that they meet as soon as possible. Mr. Brown asked how the application was going, and I told him we had recently filed an amendment mentioning some of the proposals I had sent him.

14. My last call to Mr. Brown before the petition to enlarge was filed occurred on March 1. He related that he still hadn't met with Dr. Orr concerning our program proposals, but he assured me that the College was still interested. I asked him if he would let me know if there were any problems or any change in the College's

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ATTACHMENT 1

on letterhead

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Mr. Theodore R. Brown
Vice President/Financial Development
Presbyterian College
Clinton, SC 29325

Mailed
Aug. 7, 1992

Dear Ted:

Thank you for your interest in our plans for a new broadcast facility which will provide access to Presbyterian College. I have enjoyed our recent conversations and am confident that the ideas we have discussed are only the beginning.

I am particularly encouraged to know of your evolving media program and the immediate need for expanded internship opportunities for your students. These opportunities, together with sports broadcasts and other instructional programming ideas appear to provide a great foundation for an ongoing relationship between Nazareth Communications and Presbyterian College.

Please pass along my regards to the President. I look forward to meeting with both of you again in the near future. Give me a call anytime if I can be of help on the closed circuit project.

Sincerely,

B. H. Bridges
Nazareth Communications, Inc.

BHB: stb

ATTACHMENT 2

Faxed Copy

August 10, 1992

Mr. Bill H. Bridges
President
Nazareth Communications
Post Office Box 17843
Greenville, South Carolina 29606

Dear Bill

It was a pleasure to meet you and have such a good conversation last Friday. I appreciate your interest in Presbyterian College and hope that our dialogue was as helpful to you as it was to me.

It is astonishing to me that we found so many commonalities in the college's current position and your interests and plans. As I indicated to you, our history in the area of media is relatively short but we seem to be on the fast track. With our Russell Program for media literacy we have moved aggressively toward making our liberal arts program a tool in educating our students about the power of modern communications media. In terms of radio, in particular, we have moved from renting air time for our students at a local station to establishing a closed-circuit station on our campus-wide cable system. We hope to have the latter accomplished by early fall. Presbyterian College obviously has an evolving interest in media.

Unfortunately, I was unable to get time with President Orr on Friday to discuss our conversation. He was occupied with preparation for his much-deserved vacation this week. While I am not able to speak for the college as a whole, I believe it is accurate to indicate an interest in further conversation with you as you move ahead with your plans. Once we have more clarity about how a relationship might be defined we can talk with President Orr and he can consult the officers and trustees and he sees fit.

Thank you for considering Presbyterian College as you begin to develop your plans. I look forward to speaking with you again.

Most sincerely,

Ted Brown
Vice President
Financial Development

ATTACHMENT 3

2



OFFICE OF DEVELOPMENT

Presbyterian College

CLINTON, SOUTH CAROLINA 29325 • (803) 833-2820

August 10, 1992

Mr. Bill H. Bridges
President
Nazareth Communications
Post Office Box 17843
Greenville, South Carolina 29606

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Thank you for considering Presbyterian College as you begin to develop your plans. I look forward to speaking with you again.

Most sincerely,

Ted Brown
Vice President
Financial Development